

REMARKS

Claim Rejections

Claims 9, 11 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mochel (5,261,430). Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mochel in view of Hallinder et al. (6,474,347). Claims 12 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mochel in view of Kennedy (4,011,616). Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mochel in view of Imai et al. (5,170,809).

It is noted that the references to Mochel, Hallinder et al., Kennedy, and Imai et al. were initially cited by the Examiner in the outstanding Final Office Action. Thus, this amendment represents Applicant's initial opportunity to respond to the rejections based upon these references.

Drawings

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

Claim Amendments

By this amendment, Applicant has canceled claim 10 and amended claim 9. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The primary reference to Mochel discloses an oral hygiene system including a handle (1), a tool attachment (3) insertable into the handle, and a disposable floss cartridge (4) removably connected with the tool attachment. Mochel states, at col. 3, lines 23-28:

Securing means such as hooked ends 9a and 9b on the legs of the floss cartridge seat into the outer edges of the alignment grooves at the tips of the curved prongs, thereby securing the cartridge legs and preventing them from flexing inward when pressure is applied to the floss strand during use.

Mochel teaches a disposable floss cartridge connected to the tool attachment that is connected to the handle, but does not teach a link rod having a floss bow section, the link rod and the floss bow being integrally formed. Additionally, Mochel teaches a disposable floss cartridge having hooked ends (9a, 9b), but does not teach the floss bow section having two floss expansion ends, each of the floss expansion ends having a retaining notch for securing a floss material between the two floss expansion ends. The Examiner admits that Mochel does not teach "the floss bow section having a securing screw and a securing rod" (page 3 of the outstanding Office Action), "the clamps being elastic material and the massage bar being a horseshoe shape" (page 4 of the outstanding Office Action), nor does Mochel teach "the insert section having an insert tenon" (page 4 of the outstanding Office Action).

It is axiomatic in U.S. patent law that, in order for a reference to anticipate a claimed structure, it must clearly disclose each and every feature of the claimed structure. Applicant submits that it is abundantly clear, as discussed above, that Mochel does not disclose each and every feature of Applicant's new claims and, therefore, cannot possibly anticipate these claims under 35 U.S.C. § 102. Absent a specific showing of these features, Mochel cannot be said to anticipate any of Applicant's claims under 35 U.S.C. § 102.

The secondary reference to Hallinder et al. discloses a dental floss holder (1), a dental floss roll (60), a pair of bent forked fingers (2), and a shaft (93) with heads (91, 92) at each end. Hallinder et al. states at col. 2, lines 14-16:

The dental floss end 68 can now be easily attached by pushing down the knob 91 in FIG. 2 so that the floss is captured in the gap 95. The end of the floss can be easily released by pushing the knob 92 in an upward direction (FIG. 2).

Hallinder et al. teaches a shaft with a head at each end, but does not teach the floss bow section having a securing screw and a securing rod configured to fasten ends of the floss material. Additionally, Hallinder et al. does not teach the link rod being removably connected to the insert section of the holder body, the insert section having an insert slot with two elastic clamp components, the insert section having an insert tenon; nor does Hallinder et al. teach a horseshoe shaped massage bar.

The secondary reference to Kennedy discloses a teeth cleaning device including a brush (22), a base (23), a body (34), and bristles (35). Kennedy states, at col. 3, lines 12-16:

The construction of brush 22 is seen best in FIGS. 4 through 9. Like base 23, the brush is of generally horseshoe configuration and has a skeleton generally indicated at 33, a body or covering generally indicated at 34, and bristles 35.

Kennedy teaches a toothbrush connected to a horseshoe-shaped base, but does not teach a horseshoe shaped massage bar. Additionally, Kennedy does not teach the link bar being removably connected to the insert section of the holder; the floss bow section having a securing screw and a screw rod; nor does Kennedy teach the insert section having an insert slot with two elastic clamp components.

The secondary reference to Imai et al. discloses a powered dental floss including a hand grip (10), an output shaft (40), and a floss attachment (70) carrying a floss (71).

Imai et al. does not teach a link rod having a floss bow section, the link rod and the floss bow section being integrally formed, each of the floss expansion ends having a retaining notch for securing a floss material between the two floss expansion ends; the floss bow section having a securing screw and a screw rod configured to fasten ends of the floss material; the insert section having an insert slot with two elastic clamp components; nor does Imai et al. disclose a horseshoe shaped massage bar.

Even if the teachings of Mochel, Hallinder et al., Kennedy, and Imai et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: 1) the floss bow section having a securing screw and a screw rod; 2) the insert section having an insert slot with two elastic clamp components, the rod body being removably inserted into the insert slot and frictionally engaged by the two elastic clamp components; nor does the combination teach 3) a horseshoe shaped massage bar.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in Mochel, Hallinder et al., Kennedy, nor Imai et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Mochel, Hallinder et al., Kennedy, nor Imai et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's amended claims.

Summary

In view of the foregoing, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should the Examiner not be of the opinion that this case is in condition for allowance, it is requested that this amendment be entered for the purposes of appeal, since it materially reduces the issues on appeal by canceling claim 10. This Amendment represents Applicant's initial opportunity to respond to the rejections based upon Mochel, Hallinder et al., Kennedy, and Imai et al., which references were initially cited by the Examiner in the outstanding Final Office Action.

Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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